

UNITED STATES OF AMERICA  
UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

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KEVIN WILLIAMS,

Plaintiff,

Case No. 2:10-cv-130

v.

Honorable Gordon J. Quist

MICHIGAN DEPARTMENT  
OF CORRECTIONS et al.,

Defendants.

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**OPINION**

This is a civil rights action brought by a state prisoner pursuant to 42 U.S.C. § 1983. The Court has granted Plaintiff leave to proceed *in forma pauperis*. Under the Prison Litigation Reform Act, PUB. L. NO. 104-134, 110 STAT. 1321 (1996), the Court is required to dismiss any prisoner action brought under federal law if the complaint is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant immune from such relief. 28 U.S.C. §§ 1915(e)(2), 1915A; 42 U.S.C. § 1997e(c). The Court must read Plaintiff's *pro se* complaint indulgently, *see Haines v. Kerner*, 404 U.S. 519, 520 (1972), and accept Plaintiff's allegations as true, unless they are clearly irrational or wholly incredible. *Denton v. Hernandez*, 504 U.S. 25, 33 (1992). Applying these standards, the Court will dismiss Plaintiff's complaint for immunity or failure to state a claim against Defendants Michigan Department of Corrections, Patricia Caruso, Greg McQuiggin, James Bolton, K. Woods, and M. Wallace. The Court will serve the complaint against Defendant Amanda Winnicki.

## **Discussion**

### **I. Factual allegations**

Plaintiff presently is incarcerated at Chippewa Correctional Facility (URF). In his *pro se* complaint, he sues the Michigan Department of Corrections (MDOC), MDOC Director Patricia Caruso, Correctional Facilities Administration (CFA) employee M. Wallace, James Bolton and the following URF employees: Warden Greg McQuiggin, head librarian Amanda Winnicki and librarian K. Woods. Plaintiff alleges that Defendants Woods and Winnicki refused to make copies of documents he needed to comply with the Case Management Order in another civil rights action, *Williams v. Kent*, No. 1:09-cv-481 (W.D. Mich.). (Compl., docket #1.) He further claims that Defendant Wallace told Defendant Wood that Plaintiff did not need any copies to comply with the Court's order. (*Id.*, Page ID #12.) Plaintiff asserts that these actions violated his constitutional right to access the courts.

Plaintiff also alleges that Defendant Winnicki retaliated against him by giving him a major misconduct because he requested legal copies, told her that she violated a Policy Directive and told her that she denied him access to the courts. (*Id.*, Page ID #18.) Plaintiff makes no specific allegations against Defendants Caruso, McQuiggin and Bolton. He requests injunctive relief and compensatory and punitive damages.

### **II. Immunity**

Plaintiff may not maintain a § 1983 action against the Michigan Department of Corrections. Regardless of the form of relief requested, the states and their departments are immune under the Eleventh Amendment from suit in the federal courts, unless the state has waived immunity or Congress has expressly abrogated Eleventh Amendment immunity by statute. *See Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 98-101 (1984); *Alabama v. Pugh*, 438 U.S. 781, 782 (1978); *O'Hara v. Wigginton*, 24 F.3d 823, 826 (6th Cir. 1993). Congress has not expressly

abrogated Eleventh Amendment immunity by statute, *Quern v. Jordan*, 440 U.S. 332, 341 (1979), and the State of Michigan has not consented to civil rights suits in federal court. *Abick v. Michigan*, 803 F.2d 874, 877 (6th Cir. 1986). In numerous unpublished opinions, the Sixth Circuit has specifically held that the MDOC is absolutely immune from suit under the Eleventh Amendment. *See, e.g., McCoy v. Michigan*, No. 08-1541, 2010 WL 841198, at \*7 (6th Cir. Mar. 12, 2010); *Turnboe v. Stegall*, No. 00-1182, 2000 WL1679478, at \*2 (6th Cir. Nov. 1, 2000). In addition, the State of Michigan (acting through the Michigan Department of Corrections) is not a “person” who may be sued under § 1983 for money damages. *See Lapides v. Bd. of Regents*, 535 U.S. 613 (2002) (citing *Will v. Mich. Dep’t of State Police*, 491 U.S. 58 (1989)). Therefore, the Court dismisses the Michigan Department of Corrections.

### III. Failure to state a claim

A complaint may be dismissed for failure to state a claim if “‘it fails to give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.’” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)). While a complaint need not contain detailed factual allegations, a plaintiff’s allegations must include more than labels and conclusions. *Twombly*, 550 U.S. at 555; *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (“Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.”). The court must determine whether the complaint contains “enough facts to state a claim to relief that is plausible on its face.” *Twombly*, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft*, 129 S. Ct. at 1949. Although the plausibility standard is not equivalent to a “‘probability requirement,’ . . . it asks for more than a sheer possibility that a defendant has acted unlawfully.” *Ashcroft*, 129 S. Ct. at 1949 (quoting *Twombly*, 550 U.S. at 556). “[W]here the well-pleaded facts do not permit the

court to infer more than the mere possibility of misconduct, the complaint has alleged – but it has not ‘show[n]’ – that the pleader is entitled to relief.” *Ashcroft*, 129 S. Ct. at 1950 (quoting FED. R. CIV. P. 8(a)(2)).

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege the violation of a right secured by the federal Constitution or laws and must show that the deprivation was committed by a person acting under color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988); *Street v. Corr. Corp. of Am.*, 102 F.3d 810, 814 (6th Cir. 1996). Because § 1983 is a method for vindicating federal rights, not a source of substantive rights itself, the first step in an action under § 1983 is to identify the specific constitutional right allegedly infringed. *Albright v. Oliver*, 510 U.S. 266, 271 (1994).

*A. Access to the Courts*

It is well established that prisoners have a constitutional right of access to the courts. *Bounds v. Smith*, 430 U.S. 817, 821 (1977). The principal issue in *Bounds* was whether the states must protect the right of access to the courts by providing law libraries or alternative sources of legal information for prisoners. *Id.* at 817. The Court further noted that in addition to law libraries or alternative sources of legal knowledge, the states must provide indigent inmates with “paper and pen to draft legal documents, notarial services to authenticate them, and with stamps to mail them.” *Id.* at 824-25. An indigent prisoner’s constitutional right to legal resources and materials is not, however, without limit. In order to state a viable claim for interference with his access to the courts, a plaintiff must show “actual injury.” *Lewis v. Casey*, 518 U.S. 343, 349 (1996); *see also Talley-Bey v. Knebl*, 168 F.3d 884, 886 (6th Cir. 1999); *Knop v. Johnson*, 977 F.2d 996, 1000 (6th Cir. 1992); *Ryder v. Ochten*, No. 96-2043, 1997 WL 720482, \*1-2 (6th Cir. Nov. 12, 1997). In other words, a plaintiff must plead and demonstrate that the shortcomings in the prison legal assistance program or lack of legal materials have hindered, or are presently hindering, his efforts to pursue a

nonfrivolous legal claim. *Lewis*, 518 U.S. at 351-353; *see also Pilgrim v. Littlefield*, 92 F.3d 413, 416 (6th Cir. 1996).

Plaintiff alleges that Defendants Wood and Winnicki violated his right of access to the courts by refusing to make copies he requested to comply with a case management order in *Williams v. Kent*, no. 1:09-cv-481 (W.D. Mich.). He further alleges that Defendant Wallace violated his right of access to the courts by telling Defendant Wood that Plaintiff did not need any copies. The Sixth Circuit has repeatedly held that the constitutional right of access to the courts does not entitle prisoners to free access to photocopying machinery. *See, e.g., Bell-Bey, v. Toombs*, No. 93-2405, 1994 WL 105900 (6th Cir. Mar. 28, 1994) (“the law is settled that an inmate does not enjoy a federal constitutional right to unlimited free photocopying services”); *Hawk v. Vidor*, No. 92-2349, 1993 WL 94007, at \*1 (6th Cir. Mar. 31, 1993) (“the right to have access to the courts is not interpreted as requiring unlimited access to photocopiers”); *Al-Jabbar v. Dutton*, No. 92-5004, 1992 WL 107016, at \*1 (“a prisoner’s right of access to the courts does not guarantee him unlimited photocopying at the state’s expense”) (6th Cir. May 19, 1992); *Bond v. Dunn*, No. 89-6181, 1989 WL 149988, at \*1 (6th Cir. Dec. 12, 1989) (“The constitutional right of access to the courts does not require that prison officials provide inmates free access to photocopying machinery”); *Fazzini v. Gluch*, No. 88-2147, 1989 WL 54125, at \*2 (6th Cir. May 23, 1989) (“The right of access to the courts does not require that prison officials provide free, unlimited access to photocopy machines”). Thus, in order to state a claim, Plaintiff must allege that the denial of photocopies resulted in actual injury.

Plaintiff cannot demonstrate actual injury to his pending civil rights litigation. Plaintiff alleges that he was unable to get necessary legal copies starting March 11, 2010 through April 16, 2010. (Compl., Page ID #7,18.) However, during that time he filed a motion and obtained a Court order compelling the MDOC to provide copies requested to fulfill the Court’s Case

Management Order. *See Williams v. Kent*, No. 1:09-cv-481 (W.D. Mich.) (docket ##45, 47). On June 28, 2010, he also filed a response to defendants' motion for summary judgment. *See Williams v. Kent*, No. 1:09-cv-481 (W.D. Mich.) (docket #56.) Consequently, Plaintiff was not prejudiced by Defendants' alleged failure to make the copies. Additionally, Plaintiff has not alleged that he has been unable to pursue the instant matter due to Defendants' actions. Because Plaintiff cannot demonstrate actual injury, his access to the court claim and Defendants Wallace and Wood will be dismissed.

*B. Insufficient Allegations*

Plaintiff does not make any allegations in his complaint against Defendants Caruso, McQuiggin or Bolton. It is a basic pleading essential that a plaintiff attribute factual allegations to particular defendants. *See Twombly*, 550 U.S. at 544 (holding that, in order to state a claim, Plaintiff must make sufficient allegations to give a defendant fair notice of the claim). Where a person is named as a defendant without an allegation of specific conduct, the complaint is subject to dismissal, even under the liberal construction afforded to *pro se* complaints. *See Frazier v. Michigan*, 41 F. App'x 762, 764 (6th Cir. 2002) (dismissing Plaintiff's claims where complaint did not allege with any degree of specificity which of the named defendants were personally involved in or responsible for each alleged violation of rights); *Griffin v. Montgomery*, No. 00-3402, 2000 WL 1800569, at \*2 (6th Cir. Nov. 30, 2000) (requiring allegations of personal involvement against each defendant); *Rodriguez v. Jabe*, No. 90-1010, 1990 WL 82722, at \*1 (6th Cir. June 19, 1990) ("Plaintiff's claims against those individuals are without a basis in law as the complaint is totally devoid of allegations as to them which would suggest their involvement in the events leading to his injuries"); *see also Krych v. Hvass*, 83 F. App'x 854, 855 (8th Cir. 2003); *Potter v. Clark*, 497 F.2d 1206, 1207 (7th Cir. 1974); *Williams v. Hopkins*, No. 06-14064, 2007 WL 2572406, at \*4 (E.D. Mich. Sept. 6, 2007); *McCoy v. McBride*, No. 3:96-cv-227RP, 1996 WL 697937, at \*2 (N.D. Ind. Nov. 5, 1996); *Eckford-*

*El v. Toombs*, 760 F. Supp. 1267, 1272-73 (W.D. Mich. 1991). Because Plaintiff's claims fall far short of the minimal pleading standards under FED. R. CIV. P. 8 (requiring "a short and plain statement of the claim showing that the pleader is entitled to relief"), his complaint must be dismissed against Defendants Caruso, McQuiggin and Bolton.

*C. Retaliation*

Plaintiff's retaliation claim against Defendant Winnicki is sufficient to state a claim and will be served.

**Conclusion**

Having conducted the review now required by the Prison Litigation Reform Act, the Court determines that Defendants Michigan Department of Corrections, Patricia Caruso, Greg McQuiggin, James Bolton, K. Woods, and M. Wallace will be dismissed for immunity or failure to state a claim pursuant to 28 U.S.C. §§ 1915(e)(2) and 1915A(b), and 42 U.S.C. § 1997e(c). The Court will serve the complaint against Defendant Amanda Winnicki.

An Order consistent with this Opinion will be entered.

Dated: September 3, 2010

/s/ Gordon J. Quist  
GORDON J. QUIST  
UNITED STATES DISTRICT JUDGE